IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

Crl.MC.No. 4853 of 2003()

CC.145/1997 of ADDL.CHIEF JUDICIAL MAGISTRATE (E O),ERNAKULAM

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PETITIONER(S):

1.M/S.PAN INDIA ENGINEERING AND CONSTRUCTION COMPANY (P) LTD., REVIEW BUILDINGS, NALANCHIRA P.O. TRIVANDRUM, REP. BY ITS MANAGING DIRECTOR.

2.P.P.POULOSE, MANAGING DIRECTOR, M/S.PAN INDIA ENGINEERING AND CONSTRUCTION COMPANY (P) LTD., REVIEW BUILDINGS, NALANCHIRA P.O. TRIVANDRUM-15

BY ADV. SRI.K.BABU THOMAS

RESPONDENT(S):

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1. M/S.BHARATH EARTH MOVERS LTD., 23/1, 4TH MAIN S.R.NAGAR, BANGALORE 500 027, REP. BY ITS MANAGING DIRECTOR.

2.THE DISTRICT MANAGER, M/S.BHARATH EARTH MOVERS LTD., CHITTOOR ROAD, COCHIN 16.

3.STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

SRI.A.M.SHAFFIQUE, SENIOR ADVOCATE FOR R1
PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

Crl.M.C.NO.4853 of 2003

Dated this the 12th day of December, 2007

O R D E R

This petition is filed by petitioners to quash a complaint field against him, alleging offence under Section 138 of the Negotiable Instruments Act.

2. The first respondent filed a complaint, alleging that the first petitioner which is a Company, in discharge of the liability incurred in connection with purchase of goods from the complainant, issued a cheque. The second petitioner is the Manging Director of the first petitioner who, at the time when offence was committed, was in charge of and was responsible to the first petitioner for the conduct of the business of the first petitioner. The second petitioner issued the cheque under his signature for the discharge of said liability. The cheque was dishonoured with the endorsement, 'funds insufficient'. Thereafter, notice was issued and after complying with the formalities under the Act, a complaint was filed.

3. Learned counsel for the petitioner strongly contended that the entire liability has been discharged and the cheques are without any consideration. Therefore, the petitioners are not having any

liability to pay any amount covered by the cheque and no action can be taken against the petitioners for any alleged offence under Section 138. On going through the provisions and on hearing both sides, I am not satisfied that it is a defence to be taken up by the petitioners at this stage, in a proceedings of this nature under Section 482 Cr.P.C. This court is concerned only with the allegations made in the complaint and not of the truth in the same. If the allegations in the complaint constitute offence under any offence, the court cannot quash the proceedings under Section 482 Cr.P.C.

4. On going through the complaint, it cannot be said that the allegations do not prima facie constitute offence and therefore, the defence taken up by the petitioners cannot be looked into by this Court in this proceedings. This is particularly so, since there is a dispute with respect to the alleged discharge. Disputed questions cannot be resolved in a proceedings under Section 482 Cr.P.C., as per the settled position of law.

5. In this connection learned counsel for the petitioners pointed out that the trial is almost over and all the witnesses are examined and the complaint was filed as early as in 1994 and this petition was filed only in 2003. Therefore, whatever defence the

petitioners have, can be raised before the trial court during trial. I only agree with this submission. In such circumstances, I find that there is no ground to quash the complaint under Sections 482 Cr.P.C.

This petition is dismissed.

K.HEMA, JUDGE

vgs.